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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/817,718	03/26/2001	Myron Mosbarger	03882.009	1763

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EXAMINER	
TRAN, PHILIP B	

ART UNIT	PAPER NUMBER
2155	12

DATE MAILED: 04/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/817,718	MOSBARGER ET AL.	
	Examiner	Art Unit	
	Philip B Tran	2155	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 January 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *41-131* is/are pending in the application.

4a) Of the above claim(s) *55-84,95-112 and 120-131* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *41-54,85-94 and 113-119* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claim(s) *41-131* are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Request for Continued Examination

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/21/2004 has been entered.

2. Amendment B, received on 1/21/2004, has been entered. Claims 41, 55, 75, 85, 95, 104, 113 120 and 126 have been amended. Therefore, claims 41-131 are presented for further examination.

Election/Restriction

3. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 41-54, 85-94 and 113-119, drawn to system of remote data accessing, classified in class 709, subclass 217.

II. Claims 55-74, drawn to a computer readable medium system of computer network monitoring, classified in class 709, subclass 224.

III. Claims 75-84 and 95-103, drawn to a computer readable medium system and method of routing data updating, classified in class 709, subclass 242.

IV. Claims 104-112 and 120-125, drawn to a computer readable medium system and method of computer-to computer protocol implementing, classified in class 709, subclass 230.

V. Claims 126-131, drawn to a method of computer-to-computer data routing, classified in class 709, subclass 238.

4. Inventions I, II, III, IV and V are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as system of remote data accessing wherein computers located at distant sites transfer data via at least one dedicated communications line, classified in a different Class/Subclass. Invention II has separate utility such as detecting or observing operating characteristics or conditions of computers connected the computer network by establishing a timestamp for received packets of data and testing to determine the types of received data packets, classified in a different Class/Subclass. Invention III has separate utility such as periodically exchanging control data indicating how to transfer data among nodes or routes in a network by updating the catalog, classified in a different Class/Subclass. Invention IV has separate utility such as controlling the format and relative timing of transfer of data between the computers by using transmission control protocol in order to maintain session of communication, classified in a different Class/Subclass. Invention V has separate utility such as selecting a path (telephone land line) via which the computers will transfer data, classified in a different Class/Subclass. See MPEP § 806.05(d).

5. The inventions are distinct, each from the other, because of the following reasons:

(a) These inventions have acquired a separate status in the art as shown by their different classifications.

(b) The search required for each Group is different and not co-extensive for examination purposes.

For example, the searches for the two inventions would not be co-extensive because these Groups would require different searches on PTO's classification class and subclass as following :

the Group I search (claims 41-54, 85-94 and 113-119) would require use of search Class 709, subclass 217 (not require for the invention II, III, IV and V).

the Group II search (claims 55-74) would require use of search Class 709, subclass 224 (not require for the invention I, III, IV and V).

the Group III search (claims 75-84 and 95-103) would require use of search Class 709, subclass 242 (not require for the invention I, II, IV and V).

the Group IV search (claims 104-112 and 120-125) would require use of search Class 709, subclass 230 (not require for the invention I, II, III and V).

the Group V search (claims 126-131) would require use of search Class 709, subclass 230 (not require for the invention I, II, III and IV).

For the reasons given above restriction for examination purposes as indicated is proper.

6. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48 (b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48 (b) and by the fee required under 37 CFR 1.17 (i).

8. During a telephone conversation with Mr. Lloyd W. Sadler (Reg. No. 40,154), on 03/31/2004 a provisional election was made without traverse to prosecute the invention of Group I, claims 41-54, 85-94 and 113-119. Affirmation of this election must be made by applicant in replying to this Office action. Claims 55-84, 95-112 and 120-131 withdrawn from consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Double Patenting

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225

USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claims 41-48, 50-54, 85-94 and 113-119 of the instant application are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over some claims and disclosures of Thomasson et al (Hereafter, Thomasson), U.S. Patent No. 6,205,473. Although the conflicting claims are not identical, they are not patentably distinct from each other because modifications are obvious.

Regarding claim 41, claim 6 of U.S. Pat. No. 6,205,473 recites all limitations in claim 41 [see U.S. Pat. No. 6,205,473 , Col. 10, Lines 5-57].

Each of the patent claims of Thomasson et al (Hereafter, Thomasson), U.S. Patent No. 6,205,473 is narrower than claims in the instant application. It would have been obvious to a person of ordinary skill in the art at the time of the invention was made to omit elements when the remaining elements perform as before. A person of

ordinary skill could have arrived at the present claims by omitting the details of the patent claims. **See In re Karlson (CCPA) 136 USPQ 184**, decided January 16, 1963 ("*Ommision of element and its function in combination is obvious expedient if remaining elements perform same functions as before*").

Regarding claim 42, part of claim 6 of U.S. Pat. No. 6,205,473 recites all limitations in claim 42 [see U.S. Pat. No. 6,205,473 , Col. 10, Lines 30-34].

Regarding claim 43, part of claim 6 of U.S. Pat. No. 6,205,473 recites all limitations in claim 43 (i.e., WAN = global communications network) [see U.S. Pat. No. 6,205,473 , Col. 10, Lines 5-15].

Regarding claim 44, part of claim 6 of U.S. Pat. No. 6,205,473 recites all limitations in claim 44 (i.e., repeat the amended step of claim 41) [see U.S. Pat. No. 6,205,473 , Col. 10, Lines 16-29].

Regarding claim 45, part of claim 10 of U.S. Pat. No. 6,205,473 recites all limitations in claim 44 [see U.S. Pat. No. 6,205,473 , Col. 11, Lines 5-7].

Regarding claim 46, U.S. Pat. No. 6,205,473 teaches the bi-directional electronic communications is asymmetric [see U.S. Pat. No. 6,205,473 , Abstract and Col. 1, Lines 35-57]. It would have been obvious to one of ordinary skill in the art at the time of the

invention was made to implement asymmetrical communications because it would have enabled the use of high bandwidth channel capacity of digital satellite systems for the download of large volume of data while using relatively low speed communication channels for upstream data requests. Thus, the use of separate channels for upstream data and downloaded data provides an increased efficiency of use for typical internet and other electronic information service subscribers.

Regarding claim 47, part of claim 6 of U.S. Pat. No. 6,205,473 recites all limitations in claim 47 [see U.S. Pat. No. 6,205,473 , Col. 10, Lines 45-57].

Regarding claim 48, part of claim 6 of U.S. Pat. No. 6,205,473 recites all limitations in claim 48 [see U.S. Pat. No. 6,205,473 , Col. 10, Lines 45-57].

Regarding claims 50-51, U.S. Pat. No. 6,205,473 teaches a storage medium (i.e., server disk 506) wherein the server computer's routing of the download data includes storing the download data on the storage medium prior to receipt of the download data by plurality of clients computers [see U.S. Pat. No. 6,205,473 , Col. 6, Lines 33-61]. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to implement server disk in order to store data packets before downloading to clients.

Regarding claim 52, U.S. Pat. No. 6,205,473 does not explicitly teach intermediate storage medium includes a cache. However, the use of a cache for storing data is well-known in the art. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to implement intermediate storage medium as a cache for quick and easy accessing to frequently used data.

Regarding claim 53, part of claim 6 of U.S. Pat. No. 6,205,473 recites all limitations in claim 53 [see U.S. Pat. No. 6,205,473 , Col. 10, Lines 15-29].

Regarding claim 54, U.S. Pat. No. 6,205,473 teaches the server computer routes the download data using a standard local area network protocol [see U.S. Pat. No. 6,205,473 , Col. 5, Line 60 to col. 6, Line 9]. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to use standard LAN protocol for controlling and routing packet data to the clients via the LAN.

Regarding claim 85, claim 6 of U.S. Pat. No. 6,205,473 recites all limitations in claim 85 [see U.S. Pat. No. 6,205,473 , Col. 10, Lines 5-57].

Each of the patent claims of Thomasson et al (Hereafter, Thomasson), U.S. Patent No. 6,205,473 is narrower than claims in the instant application. It would have been obvious to a person of ordinary skill in the art at the time of the invention was made to omit elements when the remaining elements perform as before. A person of ordinary skill could have arrived at the present claims by omitting the details of the

patent claims. **See In re Karlson (CCPA) 136 USPQ 184**, decided January 16, 1963 ("*Ommision of element and its function in combination is obvious expedient if remaining elements perform same functions as before*").

Regarding claim 86, part of claim 6 of U.S. Pat. No. 6,205,473 recites all limitations in claim 86 [see U.S. Pat. No. 6,205,473 , Col. 10, Lines 30-34].

Regarding claim 87, part of claim 6 of U.S. Pat. No. 6,205,473 recites all limitations in claim 87 (i.e., WAN = global communications network) [see U.S. Pat. No. 6,205,473 , Col. 10, Lines 5-15].

Regarding claims 88-89 and 91, U.S. Pat. No. 6,205,473 teaches a storage medium (i.e., server disk 506) wherein the server computer's routing of the download data includes storing the download data on the storage medium prior to receipt of the download data by plurality of clients computers [see U.S. Pat. No. 6,205,473 , Col. 6, Lines 33-61]. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to implement server disk in order to store data packets before downloading to clients.

Regarding claim 90, U.S. Pat. No. 6,205,473 does not explicitly teach intermediate storage medium includes a cache. However, the use of a cache for storing data is well-known in the art. It would have been obvious to one of ordinary skill in the

art at the time of the invention was made to implement intermediate storage medium as a cache for quick and easy accessing to frequently used data.

Regarding claim 92, part of claim 6 of U.S. Pat. No. 6,205,473 recites all limitations in claim 92 [see U.S. Pat. No. 6,205,473 , Col. 10, Lines 15-29].

Regarding claim 93, U.S. Pat. No. 6,205,473 teaches the server computer routes the download data using a standard local area network protocol [see U.S. Pat. No. 6,205,473 , Col. 5, Line 60 to col. 6, Line 9]. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to use standard LAN protocol for controlling and routing packet data to the clients via the LAN.

Regarding claim 94, part of claim 6 of U.S. Pat. No. 6,205,473 recites all limitations in claim 94 [see U.S. Pat. No. 6,205,473 , Col. 10, Lines 15-29].

Regarding claim 113, claim 6 of U.S. Pat. No. 6,205,473 recites all limitations in claim 113 [see U.S. Pat. No. 6,205,473 , Col. 10, Lines 5-57].

Each of the patent claims of Thomasson et al (Hereafter, Thomasson), U.S. Patent No. 6,205,473 is narrower than claims in the instant application. It would have been obvious to a person of ordinary skill in the art at the time of the invention was made to omit elements when the remaining elements perform as before. A person of ordinary skill could have arrived at the present claims by omitting the details of the

patent claims. **See In re Karlson (CCPA) 136 USPQ 184**, decided January 16, 1963 ("*Ommision of element and its function in combination is obvious expedient if remaining elements perform same functions as before*").

Regarding claims 114-115 and 117, U.S. Pat. No. 6,205,473 teaches a storage medium (i.e., server disk 506) wherein the server computer's routing of the download data includes storing the download data on the storage medium prior to receipt of the download data by plurality of clients computers [see U.S. Pat. No. 6,205,473 , Col. 6, Lines 33-61]. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to implement server disk in order to store data packets before downloading to clients.

Regarding claim 116, U.S. Pat. No. 6,205,473 does not explicitly teach intermediate storage medium includes a cache. However, the use of a cache for storing data is well-known in the art. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to implement intermediate storage medium as a cache for quick and easy accessing to frequently used data.

Regarding claim 118, part of claim 6 of U.S. Pat. No. 6,205,473 recites all limitations in claim 118 [see U.S. Pat. No. 6,205,473 , Col. 10, Lines 15-29].

Regarding claim 119, U.S. Pat. No. 6,205,473 teaches the server computer routes the download data using a standard local area network protocol [see U.S. Pat. No. 6,205,473 , Col. 5, Line 60 to col. 6, Line 9]. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to use standard LAN protocol for controlling and routing packet data to the clients via the LAN.

11. Claim 49 of the instant application is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over some claims of Thomasson et al (Hereafter, Thomasson), U.S. Patent No. 6,205,473 in view of Moura et al (Hereafter, Moura), U.S. Patent No. 5,586,121. Although the conflicting claims are not identical, they are not patentably distinct from each other because modifications are obvious.

Regarding claim 49, U.S. Pat. No. 6,205,473 does not explicitly teach the communication s device comprises a wireless communications device. However, Moura, in the same field of satellite communications for uploading and downloading information endeavor, discloses wireless RF communications beside telephone wire line [see Moura, Col. 5, Lines 22-52]. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to incorporate wireless communications device, disclosed by Moura, into the system of satellite communications for uploading and downloading information disclosed by Thomasson, because it would have enabled the system to avoid slow transmission speeds, high access costs, lack of available wirelines, and internet congestion by using high-speed wireless RF communications.

12. A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS ACTION IS SET TO EXPIRE THREE MONTHS, OR THIRTY DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. FAILURE TO RESPOND WITHIN THE PERIOD FOR RESPONSE WILL CAUSE THE APPLICATION TO BECOME ABANDONED (35 U.S.C. § 133). EXTENSIONS OF TIME MAY BE OBTAINED UNDER THE PROVISIONS OF 37 CAR 1.136(A).

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip Tran whose telephone number is (703) 308-8767. The Group fax phone number is (703) 872-9306.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hosain T. Alam, can be reached on (703) 308-6662.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.

Philip Tran

Philip B. Tran
Art Unit 2155
March 31, 2004